

E-FILING

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1 Stanley Chao  
2 Law Offices of Stanley Chao  
3 28 North First Street, Suite 400  
4 San Jose, California 95113  
Telephone: (408)297-2297  
Facsimile: (408)297-6956

5 Attorney for Plaintiff  
6 WANG, Qiuping

ADR

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RICHARD W. WIEKING +  
CLERK  
U.S. DISTRICT COURT  
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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

10 C07 05250 PVT

12 Qiuping Wang, ) Case No.  
13 )  
14 Plaintiff, )  
15 v. ) PETITION FOR HEARING ON  
16 Michael Chertoff, Secretary of the Department ) NATURALIZATION APPLICATION  
of Homeland Security; ) UNDER 8 U.S.C. § 1447(b)  
17 Emilio T. Gonzalez, Director of U.S. Citizenship )  
and Immigration Services; )  
18 David N. Still, San Francisco District Director of )  
U.S. Citizenship and Immigration Services; )  
19 Robert S. Mueller, III, Director of Federal Bureau )  
of Investigation )  
20 )  
21 Defendants. )  
22 \_\_\_\_\_)

23  
24 COMES NOW THE PLAINTIFF, Qiuping Wang in the above-captioned matter, and  
25 hereby states as follows.

26 1. This action is brought for a hearing to decide Plaintiff's naturalization application due  
27 to Defendants' failure to adjudicate the application within 120 days after the first examination in

1 violation of the Immigration and Nationality Act (“INA”) § 336(b) and 8 U.S.C. § 1447(b).  
2

3 **PARTIES**

4 2. Plaintiff Qiuping Wang is a lawful permanent resident of the United States since  
5 February 21, 2001. Plaintiff applied for naturalization to the United States in October  
6 2005. Defendants have failed to make a decision on the application within 120 days after the  
7 examination.

9 3. Defendant Michael Chertoff is the Secretary of the Department of Homeland Security  
10 (“DHS”), and this action is brought against him in his official capacity. He is generally charged  
11 with enforcement of the INA, and is further authorized to delegate such powers and authority  
12 to subordinate employees of the DHS 8 U.S.C. §1103(a); 8 C.F.R. §2.1.

13 4. Defendant Emilio T. Gonzalez is the Director of the United States Citizenship and  
14 Immigration Services (“USCIS”), an agency within the DHS to whom the Secretary’s authority  
15 has in part been delegated and is subject to the Secretary’s supervision. Defendant Director is  
16 generally charged with the overall administration of benefits and immigration services. 8 C.F.R.  
17 §100.2(a).

19 5. Defendant David N. Still, San Francisco District Director, is an official of the USCIS  
20 generally charged with supervisory authority over all operations of the USCIS within his District  
21 with certain specific exceptions not relevant here. 8 C.F.R. §100.2(d)(2)(ii). As will be shown,  
22 Defendant Director is the official with whom Plaintiff’s naturalization application remains  
23 pending.

25 6. Defendant Robert S. Mueller, III, is the Director of the Federal Bureau of Investigations  
26 (“FBI”), the law enforcement agency that conducts security clearances for other U.S.  
27 government agencies, such as the Department of State. As will be shown, Defendant has failed

to complete the security clearances on Plaintiff's cases.

## **JURISDICTION**

7. Jurisdiction in this case is proper under the INA §336(b) and 8 U.S.C. §1447(b). Relief is requested pursuant to said statutes.

## **VENUE**

8. Venue is proper in this court, pursuant to 8 U.S.C. §1447(b), in this Plaintiff may request a hearing on the matter in the District where Plaintiff resides.

## **CAUSE OF ACTION**

9. Plaintiff is a lawful permanent resident (A 75 667 178) of the United States since February 21, 2001 (Exhibit 1). Plaintiff filed a N-400, Application for Naturalization, with the USCIS in December 2005. She had done the fingerprinting on February 28, 2006 and was interviewed by the USCIS San Jose office on April 25, 2006 (Exhibit 2).

10. Based on the interview result from USCIS San Jose office, Plaintiff has passed the tests of English and U.S. History and Government, but was informed that a decision can not yet be made about her Application of Naturalization (Exhibit 3).

11. Plaintiff checked the status of her case through email with the F.B.I. on January 22, 2007 and February 26, 2007 but did not receive any response from the F.B.I. (Exhibit 4)

12. Plaintiff also inquired her case status with the office of Congresswoman, Ms. Anna G. Eshoo and Senator, Ms. Barbara Boxer in February, 2007. Both offices responded to her that her case is still pending for her background check.

13. Plaintiff then inquired her case status with USCIS San Jose office on May 25, 2007, the San Jose office informed her that her application is still pending for the completion of her

background check (Exhibit 5).

14. Plaintiff's application for naturalization has now remained unadjudicated for more  
2 than 520 days from the date of interview.

15. Defendants have sufficient information to determine Plaintiff's eligibility pursuant to  
5 applicable requirements.

16. Defendants, in violation of 8 U.S.C. §1447(b), have failed to make a determination on  
7 Plaintiff's naturalization application within the 120-day period after the date of examination.

9 **PRAYER**

10  
11 17. WHEREFORE, in view of the arguments and authority noted herein, Plaintiff  
12 respectfully prays that the Defendants be cited to appear herein and that, upon due consideration,  
13 the Court enter an order adjudicating the naturalization application. In the alternative, the Court  
14 may remand requiring Defendants to immediately adjudicate Plaintiff's naturalization  
15 application. In addition, Plaintiff requests an award of reasonable attorneys' fees under the  
16 Equal Access to Justice Act and such other relief at law and in equity as justice may require.  
17

18 Dated: October 11, 2007

Respectfully submitted,

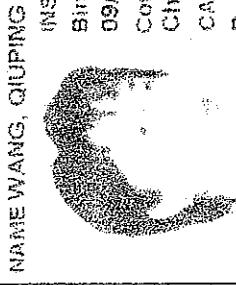
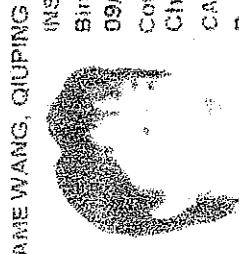
21  
22 Stanley Chao  
Attorney for Plaintiff

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8 **LIST OF ATTACHMENTS**  
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10

Exhibit	Description
1.	Copy of Plaintiff's Permanent Resident Card
2.	Copy of Plaintiff's N400 receipt notice and fingerprinting notice
3.	Copy of Naturalization Interview Results from USCIS San Jose office
4.	Copy of email sent to F.B.I. on January 22, 2007 and February 26, 2007
5.	US CIS San Jose office's reply letter dated May 25, 2007 regarding the Plaintiff's inquiry on her case status.

# Exhibit 1

**PERMANENT RESIDENT CARD**



NAME WANG, QIUPING

INS A# 075-567-178

Birthdate: January  
09/05/12 Age: 18 Sex:  
Country of Birth:  
China People's Republic of  
Card Expires: 06/13/12  
Resident Since: 02/21/01

C1USA0756671780WAC0218350110<<  
6209056F1205134CHN<<<<<<<8  
WANG<<QIUPING<<<<<<<<<<

## Exhibit 2

UNITED STATES OF AMERICA

Receipt			NOTICE DATE December 08, 2005
CASE TYPE N400 Application For Naturalization			INS # A-075 667 178
APPLICATION NUMBER WSC\$001417152	RECEIVED DATE December 01, 2005	PRIORITY DATE December 01, 2005	PAGE 1 of 1
APPLICANT NAME AND MAILING ADDRESS <b>QIUPING WANG</b> 2158 STAUNTON CT PALO ALTO CA 94306		PAYMENT INFORMATION: Single Application Fee: \$400.00 Total Amount Received: \$400.00 Total Balance Due: \$0.00	
<p>The above application has been received by our office and is in process. Our records indicate your personal information is as follows:</p> <p>Date of Birth: September 05, 1962 Address Where You Live: 2158 STAUNTON CT PALO ALTO CA 94306</p> <p>Please verify your personal information listed above and immediately notify our office at the address or phone number listed below if there are any changes.</p> <p>You will be notified of the date and place of your interview when you have been scheduled by the local INS office. You should expect to be notified within 365 days of this notice.</p> <p>If you have any questions or comments regarding this notice or the status of your case, please contact our office at the below address or customer service number. You will be notified separately about any other cases you may have filed.</p> <p>If you have other questions about possible immigration benefits and services, filing information, or INS forms, please call the INS National Customer Service Center (NCSC) at 1-800-375-5283. If you are hearing impaired, please call the NCSC TDD at 1-800-767-1833.</p> <p>If you have access to the Internet, you can also visit INS at <a href="http://www.ins.usdoj.gov">www.ins.usdoj.gov</a>. Here you can find valuable information about forms and filing instructions, and about general immigration services and benefits. At present, this site does not provide case status information.</p> <p><b>INS Office Address:</b> US IMMIGRATION AND NATURALIZATION SERVICE CALIFORNIA SERVICE CENTER P.O BOX 10400 LAGUNA NIGUEL CA 92607</p> <p><b>INS Customer Service Number:</b> (800) 375-5283</p> <p><b>APPLICANT COPY</b></p> <p>WSC\$001523187</p>			

I-797C, Notice of Action

THE UNITED STATES OF AMERICA

Fingerprint Notification			NOTICE DATE February 04, 2006
CASE TYPE N400 Application For Naturalization			INS AF# A 075 667 178
APPLICATION NUMBER WSC*001417152	RECEIVED DATE December 01, 2005	PRIORITY DATE December 01, 2005	PAGE 1 of 1
APPLICANT NAME AND MAILING ADDRESS <b>QIUPING WANG</b> 2158 STAUNTON CT. PALO ALTO CA 94306			

BIOMETRIC PROCESSING STAMP  
ATE/SAN JOSE  
ASC SITE CODE:  
BIOMETRICS QA REVIEW BY:

ON  
TENPRINT QA REVIEW BY:

FEB 28 2006

To process your application, INS must take your fingerprints and have them cleared by the FBI. PLEASE APPEAR AT THE BELOW APPLICATION SUPPORT CENTER AT THE DATE AND TIME SPECIFIED. If you are unable to do so, complete the bottom of this notice and return the entire original notice to the address below. RESCHEDULING YOUR APPOINTMENT WILL DELAY YOUR APPLICATION. IF YOU FAIL TO APPEAR AS SCHEDULED BELOW OR FAIL TO REQUEST RESCHEDULING, YOUR APPLICATION WILL BE CONSIDERED ABANDONED.

APPLICATION SUPPORT CENTER  
INS SAN JOSE  
122 CHARCOT AVE.  
SAN JOSE CA 95131

DATE AND TIME OF APPOINTMENT  
02/28/2006  
03:00 PM

WHEN YOU GO TO THE APPLICATION SUPPORT CENTER TO HAVE YOUR FINGERPRINTS TAKEN, YOU MUST BRING:

1. THIS APPOINTMENT NOTICE and
2. PHOTO IDENTIFICATION. Naturalization applicants must bring their Alien Registration Card. All other applicants must bring a passport, driver's license, national ID, military ID, or State-issued photo ID. If you appear without proper identification, you will not be fingerprinted.

PLEASE DISREGARD THIS NOTICE IF YOUR APPLICATION HAS ALREADY BEEN GRANTED.

REQUEST FOR RESCHEDULING

Please reschedule my appointment for the next available:  Wednesday afternoon  Saturday afternoon

INS cannot guarantee the day preferred, but will do so to the extent possible.

Upon receipt of your request, you will be provided a new appointment notice. Please mail your request to:

INS SAN JOSE  
122 CHARCOT AVE.  
SAN JOSE CA 95131

If you have any questions regarding this notice, please call 1-800-375-5283.

APPLICANT COPY

APPLICATION NUMBER  
WSC\*001417152



WARNING!

*Due to limited seating availability in our lobby areas, only persons who are necessary to assist with transportation or completing the fingerprint worksheet should accompany you.*

# Exhibit 3

A#: 75 667 178

On April 25, 2006, you were interviewed by USCIS Officer RESHALL

You passed the tests of English and U.S. history and government.

You passed the test of U.S. history and government and the English language requirement was waived.

USCIS has accepted your request for a Disability Exception. You are exempted from the requirement to demonstrate English language ability and/or a knowledge of U.S. history and government.

You will be given another opportunity to be tested on your ability to \_\_\_\_\_ speak / \_\_\_\_\_ read / \_\_\_\_\_ write English.

You will be given another opportunity to be tested on your knowledge of U.S. history and government.

Please follow the instructions on the Form N-14.

USCIS will send you a written decision about your application.

You did not pass the second and final test of your \_\_\_\_\_ English ability / \_\_\_\_\_ knowledge of U.S. history and government. You will not be rescheduled for another interview for this N-400. USCIS will send you a written decision about your application.

A) \_\_\_\_\_ Congratulations! Your application has been recommended for approval. At this time, it appears that you have established your eligibility for naturalization. If final approval is granted, you will be notified when and where to report for the Oath Ceremony.

B)  A decision cannot yet be made about your application.

It is very important that you:

- Notify USCIS if you change your address.
- Come to any scheduled interview.
- Submit all requested documents.
- Send any questions about this application in writing to the officer named above. Include your full name, Alien Registration Number (A#), and a copy of this paper.
- Go to any Oath Ceremony that you are scheduled to attend.
- Notify USCIS as soon as possible in writing if you cannot come to any scheduled interview or Oath Ceremony. Include a copy of this paper and a copy of the scheduling notice.

NOTE: Please be advised that under section 336 of the Immigration and Nationality Act, you have the right to request a hearing before an immigration officer if your application is denied or before the U.S. district court if USCIS has not made a determination on your application within 120 days of the date of your examination.

# Exhibit 4

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**From:** alice wang [alice7\_2000@yahoo.com]  
**Sent:** Monday, January 22, 2007 8:27 PM  
**To:** FBINNCP@ic.fbi.gov  
**Subject:** for my name check

Dear Sirs,

I have passed the U.S history on last year 4/25/2006. The case is still pending on FBI name check.  
Would you please to check my case? Here is my information:

Name: Qiuping Wang  
A# 075-667-178  
Address: 2158 Staunton Court, Palo Alto, CA94306

I will be very appreciated if you can help me to finish my name check ASAP. Thank you so much!

Best regards,

Qiuping Wang

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**From:** alice wang [alice7\_2000@yahoo.com]  
**Sent:** Monday, February 26, 2007 3:20 PM  
**To:** FBINNCP@ic.fbi.gov  
**Subject:** My name check

Dear Sirs,

This is my second letter with asking my name check. Also I ask one congress to call you department too. It already taken 10 months for my name check.

My husband and me live in difference country now . I do need finish my citizenship and then appling him to come to U.S. It's so hard we live seperate. Please don't tell me it is on pending.

Here is my information:

Name: Qiuping Wang  
A# 075-667-178  
Address: 2158 Staunton Court, Palo Alto, CA94306

I would thanks God to bless you and me. Please check my case and process ASAP. I am looking forward the letter from you. Thanks again!

Best regards,

Qiuping Wang

# Exhibit 5

U.S. Department of Homeland Security  
 USCIS  
 1887 Monterey Road  
 San Jose, CA 95112



**U.S. Citizenship  
 and Immigration  
 Services**

Friday, May 25, 2007

QIUPING WANG  
 509 WESTSIDE AVE.  
 SUNNYVALE CA 94087

Dear QIUPING WANG:

On 05/24/2007 you, or the designated representative shown below, contacted us about your case. Some of the key information given to us at that time was the following:

**Caller indicated they are:**

The applicant

**Attorney Name:**

Information not available

**Case type:**

N400

**Filing date:**

Information not available

**Receipt #:**

WANG, QIUPING

**Beneficiary (if you filed for someone else):**

A075667178

**Your USCIS Account Number (A-number):**

Case Status - Outside Processing Time

The status of this service request is:

The processing of your case has been delayed. A check of our records establishes that your case is not yet ready for decision, as the required investigation into your background remains open.

Until the background investigation is completed, we cannot move forward on your case. These background checks are required to be completed on all applicants who apply for the immigration benefit you are seeking. We will make every effort to make a decision on this case as soon as the background checks are complete. If you do not receive a decision or other notice of action from us within 6 months of this letter, please contact us by calling our customer service number provided below.

If you have any further questions, please call the National Customer Service Center at 1-800-375-5283.

Please remember: By law, every person who is not a U.S. citizen and who is over the age of 14 must also notify the Department of Homeland Security within 10 days from when they move (persons in "A" or "G" nonimmigrant status are exempt from this requirement). If you have moved, please complete a Form AR-11 and mail it to the address shown on that form. If you do not have this form, you can download it from our website or you can call the National Customer Service Center at 1-800-375-5283 and we can order one for you. If you move, please call us with your new address information as soon as your move is complete. If you have already called us and given us this information, you do not need to call again.

U.S. Citizenship and Immigration Services